

IN THE CIRCUIT COURT OF CLINTON COUNTY, MISSOURI

**F I L E D**  
**JUN 13 2011**

MOLLY LIVINGSTON  
Clerk of Clinton Co. Circuit Court

SHAWN AND JANET MANHEIM )

Plaintiffs, )

v. )

Case No. 10CN-CV00900

PRIME TANNING CORP., et al, )

Defendants. )

**MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION FOR DAMAGES**

COMES NOW, Janet Manheim ("Plaintiff") in the above entitled cause, and moves this Court for an Order pursuant to Rule 55.33(a) of the Missouri Rules of Civil Procedure, to grant her leave to file her First Amended Petition for Damages, asserting a claim for wrongful death with factual allegations in support thereof.

**SUGGESTIONS IN SUPPORT**

1. In November of 2009, Plaintiff Shawn Manheim was diagnosed with lung cancer, which spread to his brain and bones.
2. On September 22, 2010, Plaintiffs Janet Manheim and Shawn Manheim brought this action against Prime Tanning Corp., Prime Tanning Co., Inc., Wismo Chemical Corp., Elementis LTP Inc., and Burns & McDonnell Engineering Company, Inc. alleging negligence, strict liability, and loss of consortium.
3. On December 27, 2010, Plaintiff Shawn Manheim passed away as a result of lung cancer. A copy of his death certificate is attached hereto as Exhibit A.
4. Plaintiff Janet Manheim is now requesting leave to amend the original Petition for Damages filed in this case by removing the personal injury claim originally asserted by Mr.

Manheim and substituting it with a wrongful death claim with factual allegations in support thereof.

5. Plaintiff's Motion is being filed within ninety (90) days of the Defendants' filing of the Suggestions of Death on March 14, 2011.

6. Plaintiff's proposed First Amended Petition for Damages is attached hereto and incorporated herein by reference and marked Exhibit B.

7. The parties in this case have engaged in limited discovery.

8. There is no scheduling order in place.

9. Accordingly, for all of the above-stated reasons and since there will be no prejudice to the Defendants upon the filing of the First Amended Petition for Damages, Plaintiff respectfully requests that she be granted leave to file the First Amended Petition for Damages.

Respectfully submitted,

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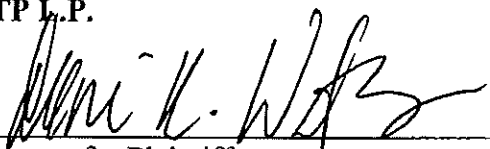
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**CERTIFICATE OF SERVICE**

I certify that on this 13<sup>th</sup> day of June, 2011, copies of the foregoing were transmitted via first class U.S. Mail, postage prepaid, to:

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IN THE CIRCUIT COURT OF CLINTON COUNTY, MISSOURI

JANET MANHEIM,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 10CN-CV00900
	)	
PRIME TANNING CORP., et al,	)	
	)	
Defendants.	)	

**FIRST AMENDED PETITION FOR DAMAGES**

Plaintiff Janet Manheim, pursuant to Mo. Rev. Stat. § 537.080, for her causes of action against Defendants, states as follows:

**Parties**

1. Plaintiff Janet Manheim is a resident of Gladstone, Clay County, Missouri. At all times relevant hereto, Janet Manheim was married to decedent Shawn Manheim ("the Decedent").
2. Plaintiff Janet Manheim is the surviving spouse and a surviving heir of the Decedent. As such, she is the proper party under the Missouri wrongful death statutes to bring a cause of action for the wrongful death of the Decedent.
3. Defendant Prime Tanning Corp. is a Missouri corporation with its principal place of business in St. Joseph, Buchanan County, Missouri. Prime Tanning Corp. is a wholly owned subsidiary of Prime Tanning Co., Inc.
4. Defendant Prime Tanning Co., Inc. is a Maine corporation with its principal place of business in Berwick, Maine.

5. Defendant Wismo Chemical Corp. ("Wismo") is a Missouri corporation with its principal place of business at 546 S. Water Street in Milwaukee, Wisconsin.

6. Defendant Elementis LTP Inc. ("Elementis") is a Delaware Corporation with its principal place of business at 546 S. Water Street in Milwaukee, Wisconsin.

7. Defendant Burns & McDonnell Engineering Company, Inc. ("Burns & McDonnell") is a Missouri corporation with its principal place of business in Kansas City, Missouri.

### **Jurisdiction and Venue**

8. Venue in this Court is proper pursuant to Mo. Rev. Stat. § 508.010 because the Decedent first suffered damages when he was first exposed to Prime fertilizer containing hexavalent chromium in Clinton County, Missouri in 1992, as a direct and proximate result of Defendants' tortious conduct.

9. Jurisdiction is proper in this Court pursuant to Mo. Rev. Stat. § 478.070.

### **Facts Applicable to All Counts**

#### **Prime Tanning Corp. and Prime Tanning Co., Inc.**

10. Prime Tanning Corp., a wholly owned subsidiary of Prime Tanning Co., Inc., and Prime Tanning Co., Inc. (hereinafter referred to collectively as "Prime") owned and operated a leather tanning facility at 205 Florence Road in St. Joseph, Missouri, until the first quarter of 2009.

11. From the early 1970's through early 2009, Prime utilized chromium in the tanning process at the St. Joseph, Missouri, facility. From the early 1970's until approximately 2009, Prime used and emitted chromium, including hexavalent chromium, from its St. Joseph, Missouri facility. From 1983 through early 2009, the residual product from Prime's tanning process was

collected and distributed as a useful product -- land-applied fertilizer. The fertilizer was distributed in Buchanan, Andrew, DeKalb and Clinton counties in Missouri. The fertilizer contained hexavalent chromium, and residents of Buchanan, Andrew, DeKalb and Clinton counties were exposed to airborne hexavalent chromium in the land-applied fertilizer when it was spread.

12. Hexavalent chromium is classified as a known human cancer causing agent.

**Wismo – A Joint Venture**  
**Between Prime and Elementis**

13. Wismo was created in March 1970 as a joint venture originally between Wayne Chemical Corporation Wisconsin and Prime, otherwise known as Blueside. At that time, Wayne Chemical Corporation Wisconsin owned a 50% share of Wismo and Prime owned a 50% share of Wismo. Wayne Chemical Corporation Wisconsin subsequently sold its 50% stake in Wismo to ACC Acquisition, Inc. in 1987. ACC Acquisition, Inc. then became Wayne Chemical Corporation Delaware which then became Elementis LTP, Inc. ("Elementis"). In short, Elementis acquired through the 1987 transaction a 50% stake in Wismo, alongside Prime, with each entity owning 500 shares of common stock of Wismo.

14. This joint venture relationship that was originally created in 1970, as identified in the preceding paragraph, remained in place up to and after the 1987 transaction between ACC Acquisition, Inc. and Wayne Chemical Corporation Wisconsin. In fact, this joint venture relationship between Elementis and Prime remained intact until Elementis sold its shares in Wismo to Prime on or about March 9, 2009.

15. This joint venture relationship and its longevity is identified by personnel of both Elementis and Prime in various writings; one of which is an email from Adel Hanna to Eric Waldmann dated January 22, 2009 bated-stamped ELEMLTP09006736; a second of which is an

email from Marie Klappauf to Elaine Durham dated November 27, 2002 bate-stamped ELEMLTP08002802; a third of which is a letter from Adel Hanna to Gary Gagnon dated January 21, 1999 bate-stamped PRIME\_EPA0010078 – PRIME\_EPA0010079; and a fourth of which is an email from Adel Hanna to Clea Williamson dated May 16, 2007 bate-stamped ELEMLTP09006754.

16. During this stretch of time, from 1970 to 2009, the sole purpose of Wismo was to produce chromium sulfate to be used in Prime's leather tanning process at its St. Joseph, Missouri leather tanning facility. Wismo did not have any employees. The Wismo production of chromium sulfate physically took place at Prime's leather tanning plant in St. Joseph, Missouri. The raw materials used in this process, including, but not limited to, sodium dichromate, an ultra hazardous, known human carcinogen, were supplied for much of this time by Elementis; notably in the mid to late 1980s up to the 2009 sale of Elementis' shares to Prime Tanning.

17. Within Wismo, Prime employees were asked to provide the hands-on labor to the Wismo operation of reducing the sodium dichromate to the chromium sulfate. In other words, the Prime employees were the ones that were providing the hands-on labor to conduct the reduction process. In large part, this fell to them as they were the persons on-site at the leather tanning plant in St. Joseph, Missouri. These persons, however, were in the business of tanning leather hides and were not chemists trained and taught in the reduction of sodium dichromate (hexavalent chromium) to chromium sulfate (trivalent chromium), nor were they persons who specifically worked for a company that was in the business of converting sodium dichromate to chromium sulfate for sale. As such, from the very beginning and up through the 2009 sale of

Elementis' shares in Wismo to Prime, these persons needed guidance and know-how regarding adequate reduction of sodium dichromate to chromium sulfate.

18. When Wismo was initially created in 1970, Wayne Chemical Corporation Wisconsin was the entity charged with providing the intellect, the know-how, the training, the guidance, the oversight, the quality control, and the process that was to be in place at Wismo to ensure that 100% reduction was obtained; meaning that no hexavalent chromium remained in the finished product. This fact is clearly evidenced in the initial agreements that were entered into between Wayne Chemical Corporation Wisconsin and Prime, then Blueside, in 1970. Elementis assumed these same responsibilities that are set forth in the original 1970 agreements when it purchased 50% of Wismo from Wayne Chemical Corporation Wisconsin in 1987. This carry over in responsibility is clearly articulated in the job descriptions of Elementis' executives, such as, the one for its Vice President and General Manager from 2008, date-stamped ELEMTP09000066, whereby it states that such person is to allocate 25% of his or her professional time to manage all three plants, including Wismo/Prime Tanning.

19. Despite the foregoing, Elementis failed to comply with its responsibilities. In fact, Elementis chose to do nothing. Elementis chose to not provide its intellect and know-how to the Wismo operation; it chose to not provide training to the Wismo operation; it chose to not provide oversight to the Wismo operation; it chose to not provide guidance to the Wismo operation; and it chose to not participate in the quality control, nor in the process of reduction at the Wismo operation. Not surprisingly, the historical data along with recent testing confirms a failure to obtain 100% reduction; meaning hexavalent chromium remained in the chromium sulfate and tannery waste before it left the Prime facility in St. Joseph, Missouri to be land applied.



**Wismo – the Alter Ego of Elementis**

20. Elementis, after acquiring a 50% share in Wismo in 1987, became an alter ego of Wismo and the two corporations were one in the same.

21. Elementis and Wismo maintained the same corporate office in Milwaukee, Wisconsin.

22. Elementis and Wismo shared the same President and officers.

23. Wismo had no employees.

24. Elementis created and managed Wismo's budgets.

25. Elementis characterized Wismo as a product line within its budget and its management plan.

26. Elementis controlled expenditures of Wismo.

27. Wismo paid out any profit at year end through dividends, leaving only a nominal amount in its bank account.

28. In fact, Jim Pullen, a Prime supervisor in the area of pollution control, testified that Wismo was simply a "paper entity;" had no employees; and that there were officers of Wismo that were Elementis employees.

29. Wismo was owned, controlled and operated by Elementis. The unity of interest in ownership between these defendants caused any individuality and separateness among them to cease so that Wismo became the alter ego of Elementis. Adherence to the fiction of these defendants as distinct and separate entities given the foregoing facts would permit an abuse of the corporate privilege and would sanction and promote injustice. Elementis should not be insulated from liability from any judgments against Wismo.

30. Wismo management and operations were assimilated to the extent that Wismo was simply a name or conduit through which Elementis conducted the business of the sale of hexavalent chromium and manufacture of trivalent chromium. This corporate fiction should be disregarded to prevent fraud or injustice.

**Burns & McDonnell**

31. In 1979, Prime hired Burns & McDonnell to advise Prime regarding the disposal of its solid waste.

32. Prime hired Burns & McDonnell to assist with the recovery of chrome from its sludge filter cake so that it would not be classified as hazardous waste.

33. In 1980, Wheeling Disposal notified Prime that it could no longer accept the tannery's solid hazardous waste, and Prime asked Burns & McDonnell to help them evaluate alternative disposal methods.

34. In August of 1980, Burns & McDonnell began working on gaining an exemption of Prime's sludge from designation as hazardous waste.

35. Burns & McDonnell engineers recognized that the Prime sludge was hazardous because it contained chrome, but wrote that the sludge could be exempted because "generally it does not contain hexavalent chrome." The Burns & McDonnell engineers wrote: "We didn't discuss this, but we probably need to discuss, in our exemption request, the potential for oxidizing the trivalent chrome to the hexavalent stage."

36. Burns & McDonnell, however, did not notify Prime or the State of Missouri that the chromium in the Prime sludge could and would oxidize to the hexavalent form.

37. In September 1980, Burns & McDonnell began advising Prime regarding land application of its tannery sludge, whereby the sludge would be disposed on farmland as fertilizer as opposed to a landfill.

38. Burns & McDonnell knew and advised that Prime would need to gain an exemption of its solid waste sludge from designation as a hazardous waste in order to land apply the sludge under both federal and state law.

39. In December 1980, Burns & McDonnell prepared a delisting petition for Prime for filing with the State of Missouri in order to get the sludge delisted as hazardous.

40. The delisting petition states as follows: "The sludge filter press cake produced is maintained in the pH range of 4.0-7.0 which should adequately assure that any chromium in the filter cake will either remain in or be reduced to the trivalent state .... The most important factor affecting the oxidation state of chromium was pH. At a pH of 7 or less, in the presence of reducing substances, hexavalent chrome is reduced to trivalent chrome.... Disposal of tannery residue in a sanitary landfill and keeping the pH below 9 should minimize the factors that contribute to Cr VI production."

41. In the delisting petition, Burns & McDonnell discussed the options for disposal of the Prime sludge if the exemption were granted – including land filling the sludge – but never mentioned that Prime intended to land apply the sludge.

42. In January of 1981, the State of Missouri delisted the Prime sludge from the hazardous waste list based upon the Burns & McDonnell delisting petition.

43. In 1983, Prime began land applying its sludge to farm land in Northwest Missouri, including plaintiffs' land, with a manure spreader.

44. In 1983, Burns & McDonnell represented to Prime and to the State of Missouri that “the potential for oxidation of trivalent chromium [in the tannery sludge] to hexavalent chromium under usual land disposal conditions is considered nil.”

45. In 1986, Burns & McDonnell was hired by Prime to assist in dealing with odor complaints stemming from the land application of its sludge.

46. Burns & McDonnell performed odor testing and recommended the addition of lime to the sludge to raise the pH over 10 in order to reduce bacterial activity and smell.

47. Prime adopted Burns & McDonnell’s recommendation and began adding lime and kiln dust and fly ash to the sludge to raise the pH over 10 or 11 to reduce odor.

48. Burns & McDonnell knew or should have known, from its own delisting petition, that boosting the pH to 10 or 11 would oxidize the chromium in the sludge to the hexavalent form.

49. Burns & McDonnell’s advice to Prime to boost the pH to 10 or 11 directly contradicted the statements Burns & McDonnell made to the State of Missouri in the delisting petition.

50. In its delisting petition, Burns & McDonnell represented to the state that the Prime sludge was not hazardous because (1) it would be land filled – not land applied and (2) the pH would be maintained below 7.

51. Burns & McDonnell knew, however, before the delisting petition was filed that Prime intended to land apply the sludge after delisting was achieved, and Burns & McDonnell affirmatively advised Prime to boost the pH of the sludge to 10 or 11.

52. From at least 1983 through early 2009, Prime hauled thousands of tons of fertilizer containing hexavalent chromium and other metals to Missouri farms, including farms in

Andrew, Buchanan, DeKalb and Clinton counties, and applied thousands of tons of fertilizer containing hexavalent chromium and other metals to such farms with a spreader.

53. Defendants' manufacture, distribution, handling and disposal of hexavalent chromium constitute an abnormally dangerous activity and demonstrate conscious disregard for the safety or property of others, and, therefore, punitive damages are warranted.

54. Defendant Elementis' failure, while knowing the complexities of the process at Wismo and the dangerous chemicals involved at Wismo, to provide the responsibilities it was charged with – that is to provide the intellect, know-how, training, guidance, oversight, and quality control to the production of chromium sulfate at Wismo to ensure 100% reduction (meaning no hexavalent chromium remained once the production was complete) constitutes conscious disregard for the safety or property of others, and, therefore, punitive damages are warranted. In addition, Elementis' failure to warn and educate Prime, its customer, all the while knowing land application occurred within Prime's industry, of the propensity of the chromium sulfate within the tannery waste to oxidize once land applied so as to regain its hexavalent chromium characteristics constitutes conscious disregard for the safety or property of others, and therefore, punitive damages are warranted.

55. Defendant Burns & McDonnell's failure to adequately warn and advise Prime regarding the safe handling of its sludge, including affirmative advice to raise the pH of the sludge to 10 or 11 while knowing that Prime was land applying its sludge in direct contravention to Burns & McDonnell's representations to the State of Missouri that the sludge was not hazardous because it would be land filled and the pH would be maintained below 7 constitutes conscious disregard for the safety or property of others, and therefore, punitive damages are warranted.

56. The fertilizer applied to fields in Missouri contained hazardous levels of hexavalent chromium that is above acceptable limits of human exposure. Portions of the fertilizer, including hexavalent chromium, become airborne in the application process.

57. In November of 2009, the Decedent was diagnosed with lung cancer, which spread to his brain and bones.

58. On December 27, 2010, the Decedent passed away as a result of the lung cancer, brain cancer and bone cancer.

59. Upon information and belief, the Decedent was first exposed to the Prime fertilizer in 1992 while residing in Clinton County, Missouri. He was also exposed to the Prime fertilizer in DeKalb County at various times from 1992-2005. As a direct and proximate result of his exposure to the Prime fertilizer, the Decedent contracted cancer and died.

60. Any statute of limitations that may apply to this action is tolled because Defendants' concealed the presence of hexavalent chromium in the Prime fertilizer and such negligent actions were not reasonably ascertainable until the Spring of 2009.

**COUNT I**  
**(Negligence of Prime)**

61. Plaintiff incorporates by reference the foregoing allegations.

62. The Prime Defendants, acting by and through their agents and employees, were negligent in the following respects:

- a. In loading and spreading fertilizer containing hexavalent chromium and other metals such that the surrounding population was exposed;
- b. In failing to warn farmers and the public that hexavalent chromium and other metals were contained in fertilizer being stored at Prime facilities and applied to Missouri farm fields nearby;
- c. In misrepresenting to regulatory authorities for the State of Missouri that the fertilizer applied to Missouri farms was free of hexavalent chromium;

- d. In failing to abide by the terms of the land application permit that allowed Prime to spread fertilizer on Missouri farm fields by applying fertilizer on snow-covered fields;
- e. In failing to report test results to the State of Missouri indicating hexavalent chromium in fertilizer applied to Missouri farm fields;
- f. In failing to adequately test the fertilizer stored at Prime and applied to Missouri farm fields for hexavalent chromium;
- g. In failing to adequately design and manufacture a chrome recovery system that would prevent hexavalent chromium from entering the Prime fertilizer;
- h. In failing to convert hexavalent chromium to trivalent chromium such that hexavalent chromium is present in the Prime fertilizer; and
- i. In failing to take steps to prevent the regeneration of hexavalent chromium in the Prime fertilizer.

63. As a direct and proximate result of the Prime Defendants' negligence, Decedent developed cancer and died.

64. As a direct and proximate result of the Prime Defendants' negligence, Plaintiff, on behalf of the individuals entitled to bring a lawsuit by reason of the wrongful death of Decedent, was forced to expend monies for the Decedent's medical treatment prior to his death, for funeral and burial expenses, and for such other expenses in an amount that, at this time, Plaintiff is unable to state with certainty.

65. As a direct and proximate result of the Prime Defendants' negligence, Plaintiff, on behalf of the individuals entitled to bring a lawsuit by reason of the wrongful death of Decedent, has been forever deprived of Decedent's consortium, services, comfort, companionship, instruction, guidance, counsel, training, and support and has forever lost the benefits from any future income provided by Decedent.

66. As a direct and proximate result of Prime Defendants' negligence, the Decedent was forced to suffer great mental pain and anguish prior to his death, for which Plaintiff, on behalf of the individuals entitled to bring a lawsuit by reason of the wrongful death of Decedent, is entitled to recover in an amount which, at this time, Plaintiff is unable to state with certainty.

WHEREFORE, Plaintiff prays for judgment against the Prime Defendants in an amount exceeding \$25,000, for punitive damages, for costs, prejudgment and post-judgment interest, and such further relief as the Court deems just and proper.

**COUNT II**  
**(Negligence of Wismo)**

67. Plaintiff incorporates by reference the foregoing allegations.

68. Wismo, acting by and through its agents and employees, was negligent in the following respects:

- a. In failing to adequately convert sodium dichromate (hexavalent chromium) to chromium sulfate (trivalent chromium) thereby ensuring 100% reduction, meaning no hexavalent chromium remained once the reduction process was complete and the product was placed into the tanning process at Prime;
- b. In failing to adequately test the chromium sulfate produced at Wismo and used at Prime to ensure that 100% reduction was obtained and that hexavalent chromium was not regenerated in the finished product;
- c. In failing to adequately warn Prime as to the complexities of how the chromium sulfate produced at Wismo and used at Prime could and would suddenly and accidentally re-convert to hexavalent chromium;
- d. In failing to use only trivalent chromium in the tanning process, instead, attempting to convert hexavalent chromium to trivalent chromium at Wismo to produce chromium sulfate to be used in Prime's leather tanning process; and
- e. In failing to take steps at Wismo and at Prime to prevent the regeneration of hexavalent chromium.



69. As a direct and proximate result of Wismo's negligence, Decedent developed cancer and died.

70. As a direct and proximate result of Wismo's negligence, Plaintiff, on behalf of the individuals entitled to bring a lawsuit by reason of the wrongful death of Decedent, was forced to expend monies for the Decedent's medical treatment prior to his death, for funeral and burial expenses, and for such other expenses in an amount that, at this time, Plaintiff is unable to state with certainty.

71. As a direct and proximate result of Wismo's negligence, Plaintiff, on behalf of the individuals entitled to bring a lawsuit by reason of the wrongful death of Decedent, has been forever deprived of Decedent's consortium, services, comfort, companionship, instruction, guidance, counsel, training, and support and has forever lost the benefits from any future income provided by Decedent.

72. As a direct and proximate result of Wismo's negligence, the Decedent was forced to suffer great mental pain and anguish prior to his death, for which Plaintiff, on behalf of the individuals entitled to bring a lawsuit by reason of the wrongful death of Decedent, is entitled to recover in an amount which, at this time, Plaintiff is unable to state with certainty.

WHEREFORE, Plaintiff prays for judgment against Defendant Wismo in an amount exceeding \$25,000, for punitive damages, for costs, prejudgment and post-judgment interest, and such further relief as the Court deems just and proper.

**COUNT III**  
**(Negligence of Elementis)**

73. Plaintiff incorporates by reference the foregoing allegations.

74. Elementis, acting by and through its agents and employees, was negligent in the following respects:

- a. In failing to adequately convert sodium dichromate (hexavalent chromium) to chromium sulfate (trivalent chromium) thereby ensuring 100% reduction, meaning no hexavalent chromium remained once the reduction process was complete and the product was placed into the tanning process at Prime;
- b. In failing to adequately test the chromium sulfate produced at Wismo and used at Prime to ensure that 100% reduction was obtained and that hexavalent chromium was not regenerated in the finished product;
- c. In failing to adequately warn Prime as to the complexities of how the chromium sulfate produced at Wismo and used at Prime could and would suddenly and accidentally re-convert to hexavalent chromium;
- d. In failing to use only trivalent chromium in the tanning process, instead, attempting to convert hexavalent chromium to trivalent chromium at Wismo to produce chromium sulfate to be used in Prime's leather tanning process; and
- e. In failing to take steps at Wismo and at Prime to prevent the regeneration of hexavalent chromium.

75. As a direct and proximate result of Elementis' negligence, Decedent developed cancer and died.

76. As a direct and proximate result of Elementis' negligence, Plaintiff, on behalf of the individuals entitled to bring a lawsuit by reason of the wrongful death of Decedent, was forced to expend monies for the Decedent's medical treatment prior to his death, for funeral and burial expenses, and for such other expenses in an amount that, at this time, Plaintiff is unable to state with certainty.

77. As a direct and proximate result of Elementis' negligence, Plaintiff, on behalf of the individuals entitled to bring a lawsuit by reason of the wrongful death of Decedent, has been forever deprived of Decedent's consortium, services, comfort, companionship, instruction, guidance, counsel, training, and support and has forever lost the benefits from any future income provided by Decedent.

78. As a direct and proximate result of Elementis' negligence, the Decedent was forced to suffer great mental pain and anguish prior to his death, for which Plaintiff, on behalf of the individuals entitled to bring a lawsuit by reason of the wrongful death of Decedent, is entitled to recover in an amount which, at this time, Plaintiff is unable to state with certainty.

WHEREFORE, Plaintiff prays for judgment against Defendant Elementis in an amount exceeding \$25,000, for punitive damages, for costs, prejudgment and post-judgment interest, and such further relief as the Court deems just and proper.

**COUNT IV**  
**(Negligence of Burns & McDonnell)**

79. Plaintiff incorporates by reference the foregoing allegations.

80. Burns & McDonnell, acting by and through its agents and employees, was negligent in the following respects:

- a. In failing to adequately advise and/or warn Prime regarding the safe handling of its solid waste, including but not limited the failure to warn Prime that the chromium in its sludge would likely oxidize to the hexavalent form if land applied;
- b. In preparing a delisting petition for Prime wherein Burns & McDonnell represented that the Prime sludge would be land filled and the pH would be maintained below 7 when Burns & McDonnell knew that the sludge would be land applied and later advised Prime to boost the pH to 10 or 11;
- c. In failing to adequately design and manufacture a chrome conversion and/or chrome recovery system that would prevent hexavalent chromium from entering the Prime fertilizer;
- d. In failing to recognize and warn that the chromium in the Prime fertilizer could and would re-convert to hexavalent chromium;
- e. In failing to adequately design the Prime fertilizer so that it would not contain dangerous chemicals such as hexavalent chromium.
- f. In advising Prime to land apply the fertilizer;
- g. In advising Prime to elevate the pH of the fertilizer to reduce odors;

- h. In failing to take steps to prevent the regeneration of hexavalent chromium in the Prime fertilizer; and
- i. In failing to adequately test the Prime fertilizer for the presence of hexavalent chromium.

81. As a direct and proximate result of Burns & McDonnell's negligence, Decedent developed cancer and died.

82. As a direct and proximate result of Burns & McDonnell's negligence, Plaintiff, on behalf of the individuals entitled to bring a lawsuit by reason of the wrongful death of Decedent, was forced to expend monies for the Decedent's medical treatment prior to his death, for funeral and burial expenses, and for such other expenses in an amount that, at this time, Plaintiff is unable to state with certainty.

83. As a direct and proximate result of Burns & McDonnell's negligence, Plaintiff, on behalf of the individuals entitled to bring a lawsuit by reason of the wrongful death of Decedent, has been forever deprived of Decedent's consortium, services, comfort, companionship, instruction, guidance, counsel, training, and support and has forever lost the benefits from any future income provided by Decedent.

84. As a direct and proximate result of Burns & McDonnell's negligence, the Decedent was forced to suffer great mental pain and anguish prior to his death, for which Plaintiff, on behalf of the individuals entitled to bring a lawsuit by reason of the wrongful death of Decedent, is entitled to recover in an amount which, at this time, Plaintiff is unable to state with certainty.

WHEREFORE, Plaintiff prays for judgment against Defendant Burns & McDonnell in an amount exceeding \$25,000, for punitive damages, for costs, prejudgment and post-judgment interest, and such further relief as the Court deems just and proper.

**COUNT V**

**(Strict Liability of Prime Due to Abnormally Dangerous Activity)**

85. Plaintiff incorporates by reference the foregoing allegations.

86. At all times relevant hereto, Prime distributed into the stream of commerce and environment fertilizer products that contained dangerously high levels of hexavalent chromium and other metals to which the Decedent was exposed.

87. The fertilizer products were put to a foreseeable, reasonably anticipated, and intended use by farmers who used the fertilizer on land near the Decedent.

88. The fertilizer products containing hexavalent chromium and other metals were in a defective condition and abnormally dangerous when put to a reasonably anticipated use for reasons including, but not limited to:

- a. There were no warnings that Prime fertilizer contained a chemical that could cause cancer and/or tumors;
- b. There were no instructions from Prime to farmers as to the safe use of the fertilizer;
- c. The fertilizer was inherently dangerous and ultra-hazardous because it contained hexavalent chromium, a carcinogen; and
- d. Prime failed to manufacture or design its fertilizer for delivery to farmers without hexavalent chromium.

89. Prime's exposure of the Decedent and the surrounding population to the fertilizer containing hexavalent chromium carried with it likelihood that the resulting harm would be significant in causing cancer and tumors.

90. The risk to the Decedent and the surrounding population could not be eliminated once the fertilizer containing hexavalent chromium was loaded and applied to Missouri farmland.

91. The harm done to the Decedent and the surrounding population from exposure to the dangerous attributes of fertilizer containing hexavalent chromium far outweighed the benefits of land application of the fertilizer.

92. The Decedent's development of cancer and death was a foreseeable result of exposure to the fertilizer.

93. As a direct and proximate result of defendant Prime's engagement in such abnormally dangerous activity, the Decedent developed cancer and died.

WHEREFORE, plaintiffs pray judgment against defendant Prime in an amount exceeding \$25,000, for punitive damages, for costs, prejudgment and post-judgment interest, and such further relief as the Court deems just and proper.

**COUNT VI**  
**(Strict Liability of Wismo Due to Abnormally Dangerous Activity)**

94. Plaintiffs incorporate by reference the foregoing allegations.

95. Wismo, acting by and through its agents and employees, is strictly liable due to its engagement in abnormally dangerous activity described as follows:

- a. Engaging in the sale and/or conversion of sodium dichromate/hexavalent chromium, a known human carcinogen, created a high degree of risk of harm to the surrounding population and properties; and
- b. Exposure of plaintiffs and the surrounding population to the fertilizer containing the hexavalent chromium that either remained from the conversion process at Wismo as 100% reduction had not been obtained or had been regenerated through a known and anticipated process of oxidization carried with it a likelihood that the resulting harm would be significant in causing severe property damage.

96. Wismo's exposure of the Decedent and the surrounding population to the fertilizer containing hexavalent chromium carried with it likelihood that the resulting harm would be significant in causing cancer and tumors.

97. The risk to the Decedent and the surrounding population could not be eliminated once the fertilizer containing hexavalent chromium was loaded and applied to Missouri farmland.

98. The harm done to the Decedent and the surrounding population from exposure to the dangerous attributes of fertilizer containing hexavalent chromium far outweighed the benefits of saving money through on-site conversion.

99. As a direct and proximate result of defendant Wismo's engagement in such abnormally dangerous activity, the Decedent developed cancer and died.

WHEREFORE, Plaintiff prays for judgment against Defendant Wismo in an amount exceeding \$25,000, for punitive damages, for costs, prejudgment and post-judgment interest, and such further relief as the Court deems just and proper.

#### **COUNT VII**

##### **(Strict Liability of Elementis Due to Abnormally Dangerous Activity)**

100. Plaintiff incorporates by reference the foregoing allegations.

101. Elementis, acting by and through its agents and employees, is strictly liable due to its engagement in abnormally dangerous activity described as follows:

- a. Engaging in the sale and conversion of sodium dichromate/hexavalent chromium, a known human carcinogen, created a high degree of risk of harm to the surrounding population and properties; and
- b. Exposure of plaintiffs and the surrounding population to the fertilizer containing the hexavalent chromium that either remained from the conversion process at Wismo as 100% reduction had not been obtained or had been regenerated through a known and anticipated process of oxidization carried with it a likelihood that the resulting harm would be significant in causing severe property damage.

102. Elementis' exposure of the Decedent and the surrounding population to the fertilizer containing hexavalent chromium carried with it likelihood that the resulting harm would be significant in causing cancer and tumors.

103. The risk to the Decedent and the surrounding population could not be eliminated once the fertilizer containing hexavalent chromium was loaded and applied to Missouri farmland.

104. The harm done to the Decedent and the surrounding population from exposure to the dangerous attributes of fertilizer containing hexavalent chromium far outweighed the benefits of saving money through on-site conversion.

105. As a direct and proximate result of defendant Elementis' engagement in such abnormally dangerous activity, the Decedent developed cancer and died.

WHEREFORE, Plaintiff prays for judgment against Defendant Elementis in an amount exceeding \$25,000, for punitive damages, for costs, prejudgment and post-judgment interest, and such further relief as the Court deems just and proper.

#### **COUNT VIII**

#### **(Strict Liability of Burns & McDonnell Due to Abnormally Dangerous Activity)**

106. Plaintiffs incorporate by reference the foregoing allegations.

107. Burns & McDonnell, acting by and through its agents and employees, is strictly liable due to its engagement in abnormally dangerous activity described as follows:

Advice and instruction to Prime regarding the handling and delisting of its chromium containing waste so that it could be land applied and advising Prime to boost the pH of the waste, thereby creating the likelihood that the chrome would be oxidized to the hexavalent form, inherently involved an abnormally dangerous activity that created a high degree of risk of harm to the surrounding population.



108. Burns & McDonnell's exposure of the Decedent and the surrounding population to fertilizer containing hexavalent chromium carried with it the likelihood that the resulting harm would be significant in causing severe damages to the surrounding properties.

109. The risk to the Decedent and the surrounding population could not be eliminated once the fertilizer containing hexavalent chromium was applied to Missouri farmland.

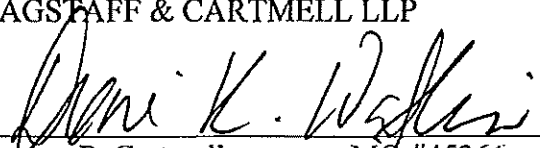
110. The harm done to the Decedent and the surrounding population from exposure to the dangerous attributes of fertilizer containing hexavalent chromium far outweighed the benefits of land application of the fertilizer.

111. As a direct and proximate result of Defendant Burns & McDonnell's engagement in such abnormally dangerous activity, the Decedent developed cancer and died.

WHEREFORE, Plaintiff prays for judgment against Defendant Burns & McDonnell in an amount exceeding \$25,000, for punitive damages, for costs, prejudgment and post-judgment interest, and such further relief as the Court deems just and proper.

Respectfully submitted,

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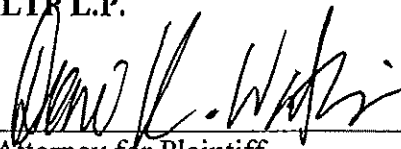
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was transmitted via U.S. mail, postage prepaid, this 13th day of June, 2011 to:

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